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Consultation on revision of the EU Emission Trading System (EU ETS) Directive

Fields marked with * are mandatory.

Introduction

On 24 October 2014, the European Council agreed on the 2030 framework for climate and energy[1], including a binding domestic target for reducing greenhouse gas (GHG) emissions of at least 40% in 2030 as compared to 1990. To meet this target, the European Council agreed that the emissions in the EU Emission Trading System should be reduced, compared to 2005, by 43%. A reformed EU ETS remains the main instrument to achieve the emission reduction target. The cap will decline based on an annual linear reduction factor of 2.2% (instead of the current 1.74%) from 2021 onwards, to achieve the necessary emission reductions in the EU ETS. The European Council furthermore gave strategic guidance on several issues regarding the implementation of the emission reduction target, namely free allocation to industry, the establishment of a modernisation and an innovation fund, optional free allocation of allowances to modernise electricity generation in some Member States.

The strategic guidance given by European leaders on these elements will be translated into a legislative proposal to revise the EU ETS for the period post-2020. This constitutes an important part of the work on the achievement of a resilient Energy Union with a forward looking climate change policy, which has been identified as a key policy area in President Juncker's political guidelines for the new Commission.

The purpose of the present stakeholder consultation is to gather stakeholders' views on these elements. This consultation focuses on issues not yet addressed in the consultations recently conducted for the 2030 Impact Assessment[2], the Impact Assessment for the carbon leakage list for 2015-2019[3] and the consultation conducted on post-2020 carbon leakage provisions[4].

In order to take stock of the EU ETS (established by Directive 2003/87/EC) as a policy measure, this consultation also contains questions concerning the general evaluation of this policy measure. The questionnaire consists of 7 chapters. You are invited to answer questions on the chapters which are relevant to you.

0. Registration

0.1. What is your profile?*

- ○ Business
- ○ A small and medium enterprise
- ◉ Trade association representing businesses

- SME business organisation
- Government institution/regulatory authority
- Academic/research institution
- Non-governmental organisation
- Citizen
- Other

0.2. Please enter the name of your business/organisation/association etc.:*

European Association of Mining Industries, Metal Ores & Industrial Minerals (Euromines)

0.3. Please enter your contact details (address, telephone, email):*

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0.4. If relevant, please state if the sector/industry you represent falls under the scope of the EU ETS:*

- (•) yes
- ( ) no
- ( ) not relevant

0.5. If relevant, please state what sector your represent:*

- (•) Energy-intensive industry
- ( ) Energy sector
- ( ) Other

0.6. The results of this stakeholder consultation will be published unless stated otherwise. Can we include your replies in the publication?*

- (•) yes
- ( ) no
- ( ) partially

0.7. Register ID number (if you/your organisation is registered in the Transparency register):

6272297864495

1. Free allocation and addressing the risk of carbon leakage

The European Council has concluded that free allocation to prevent the risk of carbon leakage should not expire as foreseen in the current legislation, but should continue also after 2020 as long as there are no comparable efforts to reduce emissions in other major economies.

Extensive stakeholder consultation was already carried out on the post-2020 carbon leakage provisions, as well as on aspects related to innovation support. The process included three full-day stakeholder meetings (June, July and September 2014) and a written consultation conducted for 12 weeks (8 May – 31 July, 2014). The written consultation covered 23 multiple choice questions with space for motivations, and a question allowing respondents to bring up any other issue they felt was important or insufficiently covered.

The documents and minutes of the meetings, as well as the submissions and the analysis thereof in the case of the written consultation, are available on the Commission website.

Information from the stakeholder meetings:

http://ec.europa.eu/clima/events/articles/0090_en.htm

http://ec.europa.eu/clima/events/articles/0095_en.htm

http://ec.europa.eu/clima/events/articles/0097_en.htm

Replies and summary of the written consultation:

http://ec.europa.eu/clima/consultations/articles/0023_en.htm

The results of the above mentioned public consultation are being taken into account in the preparation of the legislative proposal. In order to reduce the administrative burden for stakeholders and the Commission, the present consultation focuses on issues not already covered in this recently finalised public consultation. Respondents are nevertheless invited to add to the replies provided in the earlier consultations if deemed necessary in the light of the conclusions of the European Council in this area.

1.1 The European Council called for a periodic revision of benchmarks in line with technological progress. How could this be best achieved in your view and, in particular, which data could be used to this end? How frequently should benchmarks be updated, keeping in mind administrative feasibility?

4,500 character(s) maximum

Euromines believes that a revision of benchmarks should take place only once in the trading period. This would allow legal certainty and also limit the administrative burden, in particular for sectors with a high number of installations. Euromines fully supports technological development but such a progress takes time and, in this context, our association con

siders as not appropriate a more frequent revision.

Euromines also considers that a revision of benchmarks and other aspects of carbon leakage must be based on the principle of the most efficient 10% of installations receiving 100% of the EU ETS allowances they need for free.

Allocation should be based on real industry data in Europe in order to reflect the actual evolution of emission performance. It should not result from an annual linear reduction as this is arbitrary and contradicts the principle of technical feasibility.

Emissions that are inherent to any mineral raw material and, therefore are an integral part of the processing process should either be excluded or granted full free allocation due to the inability to reduce them as they are linked to the chemical properties of locally available raw materials.

1.2 The European Council has defined guiding principles for the development of post-2020 free allocation rules which provide inter alia that "both direct and indirect costs will be taken into account, in line with the EU state aid rules" and that "the most efficient installations in these sectors should not face undue carbon costs leading to carbon leakage" while "incentives for industry to innovate will be fully preserved and administrative complexity will not be increased" and while "ensuring affordable energy prices". Do you have views how these principles should be reflected in the future free allocation rules?

4,500 character(s) maximum

Euromines is of the opinion that the ETS and post-2020 free allocation should be embedded into Europe's commitment to increase industry's contribution to the EU's GDP to 20% in 2020 and beyond. This means that the whole design of the EU ETS should not undermine the competitiveness of industry, in particular the energy-intensive sectors that are most vulnerable to unilateral carbon and energy cost increases.

Euromines thinks that free allocation for carbon leakage sectors must be dynamic, taking into account recent production levels. It must allow industrial growth and extended production in the sense of backward integration. The current system based on historical activity levels deters any incentive for growth in times of economic recovery. It is also adverse to backward integration that has clear environmental and socio-economic advantages in comparison to outsourcing and extraction in third countries. If European companies were to outsource their raw materials production to e.g. China this would mean an increase of 20% CO2 emissions per ton material produced due to less strict environmental standards. The same adverse consequences apply for other third countries.

The free allocation rules should be based on technically and economically feasible benchmarks. Free allocation should also be made to the full e

xtent of the benchmark, i.e. the cross-sectoral correction factor should not be applied, as it reduces the free allocation below the level of tec hnical feasibility. The activity levels used to determine the free alloc ation must reflect economic reality but taking into account also the adm inistrative complexity and confidentiality. Such system would have the a dvantage of avoiding the complex rules on capacity change and cessation and would fully preserve the incentive to innovate because it is based o n very ambitious benchmarks.

The free allocation rules should not penalise installations that impleme nt energy/carbon efficiency measures in sectors that receive free alloca tion on the basis of the fall back options instead of product benchmark s. The design should therefore also take into account the indirect impac t on electricity prices. This means that indirect costs should be mitiga ted for all sectors that are at risk of carbon leakage. Consequently, th e financial compensation for indirect costs passed through in electricit y prices should be extended to electro-intensive sectors as defined in t he Environmental and Energy Aid Guidelines (EEAG).

1.3 Should free allocation be given from 2021 to 2030 to compensate those carbon costs which sectors pass through to customers? How could free allocation be best determined in order to avoid windfall profits?

4,500 character(s) maximum

Euromines supports the idea of a dynamic allocation system that would al low and even incentivise industrial growth and an extension of productio n as it refers to more recent data. Such a system would obviously apply in the reverse situation, meaning lower production. Therefore a possible adjustment is the use of more recent activity levels, which would reflec t better economic reality in the free allocation and help to avoid windf all profits.

1.4 Are there any complementary aspects you would like to add to the replies given to the previous written consultation in the light of the European Council conclusions?

4,500 character(s) maximum

The European Council conclusions provide a clear mandate for the continu ation of direct allocation at the level necessary to ensure that the mos t efficient 10% of installations in each sector receive all the allowanc es they need for free. To achieve this, free allocation must be based on either realistic and predictable benchmarks or other realistic objective s and targets.

The cross-sectoral correction factor must be removed, as it contradicts the spirit of the carbon leakage framework. Reform of the carbon leakage provisions is even more pressing given the proposed introduction of the market stability reserve (MSR), which will push up carbon prices signifi cantly. This is essential in the absence of an international legally bin

ding agreement with an equivalent effort by all major market competitors and fully comparable in terms of emissions reductions, timescale and degree of enforcement.

Another essential point is the coverage of the ETS: The scope of the EU ETS covers both the power and industry sectors, which differ significantly for their exposure to competition and ability to pass through the direct and indirect carbon costs. Due to these differences, differentiated and tailored-made systems for manufacturing and power sectors need to be developed according to their specificities.

Climate policy needs a broader approach, which also takes into account embedded emissions in imported products. Therefore, the inclusion of imports in the trading scheme also deserves an in-depth assessment in order to ensure that the EU is not simply decarbonising by deindustrialising.

2. Innovation fund

The European Council has concluded that 400 million allowances in 2021 to 2030 should be dedicated for setting up an innovation fund to support demonstration projects of innovative renewable energy technologies, carbon capture and storage (CCS) as well as low carbon innovation in industrial sectors. To make this fund operational, a legal basis has to be created in the EU ETS Directive while further implementation modalities can be set out in secondary legislation. The work can build on the experience with the existing "NER300" programme which made available 300 million allowances for CCS and innovative renewable energy technologies[1].

With regard to establishing a legal basis for the innovation fund as part of the revision of the EU ETS Directive, the Commission seeks feedback on the following questions:

2.1 Do you see reasons to modify the existing modalities applied in the first two calls of the NER300? Are there any modalities governing the NER 300 programme which could be simplified in the design of the innovation fund? If you see the need for changes, please be specific what aspects you would like to see changed and why.

4,500 character(s) maximum

Euromines welcomes the setting up of a transparent innovation fund and supports measures aiming at accelerating low-carbon innovation and technology in the industrial scope.

2.2 Do you consider that for the extended scope of supporting low-carbon innovation in industrial sectors the modalities should be the same as for CCS and innovative renewable energy technologies or is certain tailoring needed, e.g. pre-defined amounts, specific selection criteria? If possible, please provide specific examples of tailored modalities.

4,500 character(s) maximum

2.3 Are there any complementary aspects regarding innovation funding you would like to add to the replies given to the previous written consultation in the light of the European Council conclusions?

4,500 character(s) maximum

3. Modernisation fund

The European Council has concluded that 2% of the total EU ETS allowances in 2021 to 2030 should be dedicated to address the particularly high investment needs for Member States with GDP per capita below 60% of the EU average. The aim is to improve energy efficiency and to modernise the energy systems of the benefitting Member States. The fund should be managed by the beneficiary Member States, with the involvement of the European Investment Bank (EIB) in the selection of projects. To make this fund operational, a legal basis has to be created (in the EU ETS Directive), while further implementation modalities can be set out in secondary legislation.

With regard to establishing a legal basis for the modernisation fund as part of the revision of the EU ETS Directive, the Commission seeks feedback on the following questions:

3.1 Implementation of the modernization fund requires a governance structure: What is the right balance between the responsibilities of eligible Member States, the EIB and other institutions to ensure an effective and transparent management?

4,500 character(s) maximum

Euromines believes that a right balance between the responsibilities of eligible Member States, the EIB and other institutions should reflect a transparent structure ensuring that funds are solely used for measures aiming at achieving the 2030 climate and energy targets and avoid confusing them with subsidies granted to lower-income Member States.

3.2 Regarding the investments, what types of projects should be financed by the modernisation fund to ensure the attainment of its goals? Should certain types of projects be ineligible for support?

4,500 character(s) maximum

Euromines supports funds aiming at modernising energy systems in lower income Member States as long as full transparency is ensured and the financed projects do not distort of affect in any way the fair competition on the internal market by giving certain member states unfounded advantages.

3.3 Should there be concrete criteria [e.g. cost-per-unit performance, clean energy produced, energy saved, etc.] guiding the selection of projects?

4,500 character(s) maximum

3.4 How do you see the interaction of the modernisation fund with other sources of funding available for the same type of projects, in particular under the optional free allocation for modernisation of electricity generation (see section 4 below)? Would accumulation rules be appropriate?

4,500 character(s) maximum

Euromines welcomes support measures that avoid discrimination and do not distort in any way the internal market competition.

3.5 Do you have views how the assessment of the projects should be reflected in the forthcoming 2030 governance process (e.g. national climate programmes, and plans for renewable energy and energy efficiency)?

4,500 character(s) maximum

3.6 Should the level of funding be contingent on concrete performance criteria?

4,500 character(s) maximum

4. Free allocation to promote investments for modernising the energy sector

The conclusions of the European Council provide for the continuation after 2020 of the mechanism foreseen in Article 10c of the EU ETS Directive, which allows some Member States to opt to hand out free allowances to power plants in order to promote investments for modernising the energy sector. The current Article 10c modalities, including transparency, should be improved to promote investments modernising the energy sector, while avoiding distortions of the internal energy market.

With a view to reviewing and improving the current modalities as part of the revisions to the EU ETS Directive, the Commission seeks feedback on the following questions:

4.1 How can it be ensured that investments have an added value in terms of modernising the energy sector? Should there be common criteria for the selection of projects?

4,500 character(s) maximum

Euromines believes the only way to ensure that investments bring added value in terms of modernising the energy sector is to guarantee this mechanism does not affect free competition and that criteria for selecting such projects are transparent and they aim solely at promoting a transition to a more carbon-efficient energy system and not grant any other unfair business competitive advantage.

4.2 How do you see the interaction of the free allocation to energy sector with other sources of funding available for the same type of projects, e.g. EU co-financing that should be made available for the projects of common interest under the 2030 climate and energy framework? Would accumulation rules be appropriate?

4,500 character(s) maximum

4.3 Do you have any views how the assessment of the projects should be reflected in the forthcoming 2030 governance process (e.g. as regards improving transparency)?

4,500 character(s) maximum

4.4 The maximum amount of allowances handed out for free under this option is limited. Do you think eligible Member States should use the allowances for a period of time specified in advance (e.g. per year), or freely distribute them over the 2021-2030 period? (Please explain your motivation.)

4,500 character(s) maximum

Using allowances for a period of time specified in advance rather than d istributing them freely over the 2012 – 2030 period should provide a cle arer annual vision of the projects and should help establish a clear cut idea of where a project should by years end, what are its weaknesses and strengths and where there is room for improvement.

4.5 Should there be priorities guiding the Member States in the selection of areas to be supported?

- (•) yes
- ( ) no

If so, which of the following areas, if any, currently supported through investments for modernisation of electricity generation up to 2020 should be prioritised for support up to 2030 and why?

- [ ] Interconnectors
- [ ] Smart Grids
- [x] Super-critical coal
- [x] Gas
- [ ] Renewable energy
- [x] Energy storage
- [ ] Energy efficiency
- [ ] Other (please elaborate)

Please explain in detail:

4,500 character(s) maximum

4.6 How can improved transparency be ensured with regard to the selection and implementation of investments related to free allocation for modernisation of energy? In particular regarding the implementation of investments, should allowances be added to auctioning volumes after a certain time period has lapsed in case the investment is not carried out within the agreed timeframe?

4,500 character(s) maximum

5. SMEs / regulatory fees / other

In order to allow taking stock of the EU ETS aspects beyond those examined by the European Council, respondents are also invited to provide feedback on certain other questions.

The Commission ensures that better regulation principles govern all of the policy work, including that the specificities of small and medium sized enterprise (SMEs) are taken into due consideration. Member States can exclude certain small installations from the EU ETS in the current trading period (2013-2020) if taxation or other equivalent measures are in place that will cut their emissions. If such a possibility was to be reviewed, a legal basis would have to be created in the EU ETS Directive.

The accurate accounting of all emission allowances issued is assured by a single Union Registry with strong security measures. The operations were centralised in a single Registry operated by the Commission, following a revision of the ETS Directive in 2009. This has replaced Member States' national Registries. Despite the considerable resources from the EU budget required for maintaining the EU Registry, as does supporting work on auctioning, the Commission does not have the possibility to charge any fees. However, Member States administrators may still charge Registry fees to account holders administered by them. There are discrepancies in fees across different Member States.

5.1 Are there any EU ETS administrative requirements which you consider can be simplified? Do you see scope to reduce transaction costs, in particular for SMEs? If yes, please explain in detail.

4,500 character(s) maximum

Monitoring and reporting rules represent a major component of the administrative burden for ETS installations and SMEs in particular. However, existing simplified rules for small installations are very restrictive and are not always applied at national level in a harmonised way due to the different approaches of local authorities. Therefore, such rules should be better adapted to reflect the administrative capacity of SMEs and should provide sufficient legal certainty to ensure they are not subject to the arbitrary decision of local authorities. De minimis sources of emissions should be completely excluded from the monitoring and reporting obligations.

5.2 Member States had the possibility to exclude small emitting installations from the EU ETS

until 2020. Should this possibility be continued? If so, what should be the modalities for opt-out installations to contribute to emission reductions in a cost-effective and economically efficient manner? Should these be harmonised at EU level?

4,500 character(s) maximum

Euromines fully supports the continuation to exclude small installations. Such possibility should definitely be continued and should remain in the competence of member states. The best experiences of those member states making use of this possibility in the third trading period should be exchanged in order to extend them to other countries. In line with the new Commission's objective of reducing EU bureaucracy and focusing only on bigger priorities, the opt-out possibility should be extended to installations with annual emissions below 50.000 tons. According to 2013 data, around 13,540 installations reported emissions below this threshold. They represented around 84% of the total number of ETS installations (16,200) but only 5% of total emissions (95M tons vs. 1.75bn tons). Therefore, extending the opt-out possibility to such installations would give the opportunity to reduce significantly the administrative burden without undermining the overall environmental objective. The decision to opt-out should remain optional and subject to the choice of the installation.

5.3 How do you rate the importance of a high level of security and user-friendliness of the Union Registry? Do you think the costs for providing these services should be covered via Registry fees?

4,500 character(s) maximum

Euromines believes that a number of simplifications should be made to the registry, as follows. First, the number of instances in which it requires the entry of a password and mobile phone number, and a text response, should be reduced. This is currently needed for each action, which is extremely time consuming when actions are required on all of a firm's accounts at the same time (especially at year-end verification).
The 26-hour delay on transactions between a company's own accounts should be removed as this makes basic housekeeping very difficult.
In addition, personal user documents should not have to be resubmitted each time responsibilities change; this is time-consuming and isn't required in banking systems. A letter from the company secretary or a director should be all that is needed if original documents are on file.
Finally, it is unnecessary to email notifications to all account representatives when the registry has planned maintenance.

5.4 Do you consider discrepancies in Registry fees in different Member States justified? Should Registry fees be aligned at EU level?

4,500 character(s) maximum

Yes, Registry fees should be aligned at EU level due to distortion of the Single Market.

5.5 Under the current EU ETS Directive, at least 50% of the revenues generated from the auctioning of allowances should be used by Member States for climate-related purposes. For the calendar year 2013 Member States have reported to have used or to plan to use 87 % on average to support domestic investments in climate and energy. Do you consider the current provisions regarding the use of the revenues adequate for financing climate action? If not, please explain why?

4,500 character(s) maximum

6. General evaluation

6.1 How well do the objectives of the EU ETS Directive correspond to the EU climate policy objectives?
How well is the EU ETS Directive adapted to subsequent technological or scientific changes?

4,500 character(s) maximum

Unfortunately, the design of the EU ETS is not adapted to technological changes, as it is based on an emission reduction objective that is determined through an ex-ante political decision. Therefore, the long-term climate objective is a major concern to Euromines, as it does not take into account the real reduction potential that is technically and economically feasible.

6.2 What are the strengths and weaknesses of the EU ETS Directive? To what extent has the EU ETS Directive been successful in achieving its objectives to promote emission reductions in a cost-effective manner compared to alternatives, e.g. regulatory standards, taxation?

4,500 character(s) maximum

The market-based nature of the EU ETS has ensured that emissions reductions have been achieved in a cost-effective manner so far, reflecting also the deep crisis of the EU economy, which has severely reduced the financial ability to invest in low carbon technologies.

However, legislative initiatives like back-loading and the on-going market stability reserve and the ambitious 2030 emission reduction objective will increase significantly the direct and indirect costs of EU ETS and also deter necessary investment. Therefore, post 2020 rules on free allocation and financial compensation for indirect costs should be clear, predictable and effective to ensure the competitiveness of the European industry. If such effectiveness cannot be guaranteed, alternative measures such as separate policy regimes for industrial and power generation sectors and the inclusion of imports in EU ETS must be analysed and explored.

6.3 To what extent are the costs resulting from the implementation of the EU ETS Directive proportionate to the results/benefits that have been achieved, including secondary impacts on financing/support mechanisms for low carbon technologies, administrative cost, employment impacts etc.? If there are significant differences in costs (or benefits) between Member States, what is causing them?

4,500 character(s) maximum

The cost/benefit analysis should be extended to the whole EU climate policy in order to be representative. Therefore, it should take into account the impact from other provisions such as the ones related to the promotion of renewables and energy efficiency. In this sense, the impact is not negligible if one takes into account also the currently limited financial ability of the EU society. As explained above, the direct and indirect costs of post 2020 EU ETS are likely to be much higher than the ones experienced in the latest years. Therefore, effective leakage protection is essential for energy intensive industries like ceramics in the absence of equivalent climate commitments and measures in non-EU countries.

6.4 How well does the EU ETS Directive fit with other relevant EU legislation?

4,500 character(s) maximum

Several legislative measures resulting from the 2020 climate and energy package had overlapping objectives and scopes with the EU ETS, in particular in the field of renewables and energy efficiency. Post 2020 legislation implementing the 2030 package should avoid such overlapping and double burden.

6.5 What is the EU value-added of the EU ETS Directive? To what extent could the changes brought by the EU ETS Directive have been achieved by national measures only?

4,500 character(s) maximum

6.6 Do you have any other comment on the revision of the EU ETS Directive that you would like to share?

4,500 character(s) maximum

Contact

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